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J. M. Perry, of Staunton, for defendant in error.

PER CURIAM. Affirmed by divided court.

PRENTIS, J., absent.

CHESAPEAKE & O. RY. CO. *v.* WARE.

Jan. 24, 1918. Rehearing Denied March 21, 1918.

[95 S. E. 183.]

1. Railroads (§ 478 (1)*—Fires—Pleading—Negligence.—Under the Featherstone Act (Acts 1908, c. 269), plaintiff, alleging a destruction of property by fire occasioned by a spark thrown from an engine, need not charge the railroad company with negligence, and demur-
rer, challenging the sufficiency of allegations attempting to so charge, will be ignored on appeal.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 131.]

2. Appeal and Error (§ 1051 (1)*—Evidence—Harmless Error.—Where the evidence, aside from that objected to by two assignments is sufficient to sustain the verdict, such assignments will not be considered.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 592.]

3. Railroads (§ 482 (2)*—Fires—Sufficiency of Evidence.—Evi-
dence, in an action against a railroad company for damages by fire, examined, and held that the circumstances warranted the jury in find-
ing that the fire was set by sparks from a passing train.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 135.]

4. Evidence (§ 75*)—Presumption—Possession of Records and Failure to Controvert.—Where, in an action against a railroad com-
pany for loss by fire, the question is, did a certain train pass at about a certain time? and the plaintiff makes *prima facie* showing that it did, which defendant, although possessing records of the movements of its trains, did not controvert, such *prima facie* showing became conclusive of the fact.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 228, 229.]

5. Evidence (§ 54*)—Inference Based on Inference.—Where the inference that a train passed a given place about a certain time has the required basis of a proved fact, although proved by circumstan-
tial evidence, it may, in connection with other facts, form the basis of an inference by the jury that a fire at such time and place was set out by such train.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 323.]

Error to Circuit Court of City of Williamsburg and County of James City.

Action by W. Walker Ware against the Chesapeake & Ohio

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Railway Company. Judgment for plaintiff, and defendant brings error. Affirmed.

S. O. Bland and *R. G. Bickford*, both of Newport News, and *Henry Taylor, Jr.*, of Richmond, for plaintiff in error.

Frank Armistead and *Ashton Dovell*, both of Williamsburg, for defendant in error.

AUSTIN *v.* SANDERS.

Jan. 24, 1918. Rehearing Denied March 27, 1918.

[95 S. E. 273.]

1. Equity (§ 43*)—Jurisdiction—Adequate Remedy at Law.—As courts of equity have elementary jurisdiction to render decrees for the value of deficiency in quantity of land sold by the acre, it is immaterial that complainant has an adequate remedy at law.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 171; 13 Va.-W. Va. Enc. Dig. 536.]

2. Vendor and Purchaser (§ 350*)—Actions—Deficiency—Evidence.—In an action against a vendor to recover for deficiency in quantity of a parcel of land sold, evidence held insufficient to show any misrepresentations on the part of the vendor, and that all misrepresentations made by the agent who effected the sale and who became a partner of the complainant, the purchaser, in acquiring the property, were made either before he became the agent of the vendor or after he became a partner with the complainant, so that the vendor was in no way responsible.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 552.]

3. Vendor and Purchaser (§ 350*)—Deficiency—Actions—Evidence.—In an action for deficiency in quantity of parcel of land sold, evidence held insufficient to show that the sale was made either expressly or impliedly by the acre so as to warrant recovery, notwithstanding the memorandum of the contract of sale stated the parcel of land was supposed to contain 800 acres.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 552.]
Sims, J., dissenting.

Appeal from Circuit Court, Prince William County.

Suit by Frederick R. Austin against Frederick H. Sanders. From a decree dismissing the bill, complainant appeals. Affirmed.

E. Hilton Jackson, of Washington, D. C., and *C. A. Sinclair*, of Manassas, for appellant.

John M. Johnson, of Alexandria, and *Thos. H. Lion*, of Manassas, for appellee.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.